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South Africa

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Introduction

"To deny people their human rights is to challenge their very humanity."

Nelson Mandela

1. The Republic of South Africa is honoured to present its 3rd cycle Universal Periodic Review Report.

2. Since the advent of democracy in South Africa in 1994, the Government continues to pursue the country's quest to attain its national ideals of the realisation of human rights and fundamental freedoms for all. The ideal of the South African democratic dispensation is to attain social cohesion and national identity by, among others, effectively addressing the glaring challenges of inequality, poverty and unemployment. In this regard, South Africa has registered considerable progress towards the achieving of its national ideals and has proven that its institutions of government are maturing. South Africa, as a full member of the United Nations, in its engagement with the global system of governance, continues to embrace the centrality of the Charter of the United Nations; the primacy of the principles of international law; commitment to multilateralism; and, respect for the rule of law.

I. Methodology and cons ultation

3. This report provides an update on the development of human rights and fundamental freedoms in South Africa, during the period under review, and highlights progress on the country's implementation of the recommendations made by Member States of the UNHRC towards the beginning of the 2nd cycle in 2012. During the 21st session of the UNHRC, held in September 2012, South Africa accepted 152 recommendations and thereafter compiled a composite document setting out the draft responses thereto.

4. Accordingly, this report is essentially a synthesis document compiled on the basis of information drawn from various Government Departments verified through research and information or comments obtained from some non-governmental organizations.

II. Developments since the previous review

Constitutional, legislative and policy measures

5. The South African Constitution provides for both civil and political rights and economic, social and cultural rights, all of which are justiciable in the courts of the land. It incorporates a comprehensive set of human rights standards articulated in public international law, which form the bedrock of our constitutional order and places the attainment of human rights for all citizens at the centre of all Government policy and legislation. It forms the basis for, and consideration of, all human rights situations in the country.

6. The National Planning Commission (NPC), which was established in 2009, has drafted South Africa's first long-range plan – **National Development Plan (NDP): Vision 2030, which aims to eliminate poverty and reduce inequality by 2030**. The NDP was adopted in 2013 and primarily focuses on the development of South Africa for the benefit of all its people and the full realisation of human rights. Government's five year plan – the Medium Term Strategic Framework (MTSF), coincides with the five year term of government. The current MTSF pursues **14 broad priority outcomes**. It represents the first

five-year implementation phase of the NDP. It covers the focus areas identified in the NDP and Government's electoral mandate: education, health, safety and security, economic growth and employment, skills development, infrastructure, rural development, human settlements, local government, environment, international relations, public sector, social protection, nation-building and social cohesion.

7. In pursuance of the 14 outcomes, Government employs its hierarchy of planning and budgeting instruments to focus its work on the implementation of the NDP. Accordingly, the NDP is broken down into the MTSF priorities which, in turn, are reviewed and updated annually by means of Annual Performance Plans of each Government Department; all of which aim to realise human rights enshrined in the Constitution,[1] within available resources.

8. In 2014, Government consolidated both its planning and monitoring and evaluation functions into a single Department of Planning, Monitoring and Evaluation with a view to institutionalising long-term planning across the three spheres of Government in order to ensure efficient and effective implementation of programmes.

9. Chapter 2 of the Constitution provides for human rights and fundamental freedoms which inform the normative and institutional framework within which legislative steps can be taken to give legal effect to these rights and fundamental freedoms. It is notable, too, that the principle of constitutional supremacy demands accountability from Government as well as creating a framework for the justiciability of socio-economic and cultural rights. The Constitution, in Chapter 9, provides for institutions such as the Public Protector, the South African Human Rights Commission (SAHRC), the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL) and the Commission for Gender Equality (CGE), all of which are subject only to the Constitution and are required to exercise their powers and execute their functions impartially and independently.

10. These Chapter 9 institutions, together with an independent judiciary, contribute to a normative framework in which compliance with international human rights and constitutional imperatives is mandatory.

11. The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000[2] ("PEPUDA") prevents and prohibits unfair discrimination on the grounds set out in section 9 of the Constitution, the 'equality' clause, and provides a framework for its implementation. PEPUDA established the Equality Court which can be approached for relief by any person who feels aggrieved by any act of discrimination. The table below sets out the latest Equality Court figures:

Complaint	April to March		% change
	2014/15	2015/16	
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
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[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]

12. The passing of the **Prevention and Combating of Torture of Persons Act, 2013**[3] is an important milestone in our committed journey towards the full attainment of human rights. The Act gives effect to South Africa's obligations arising from the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It aims to prevent and combat the torture of persons and to impose a maximum penalty of R100 million or life imprisonment, or both, in the case of a conviction.

13. South Africa has passed **the Prevention and Combating of Trafficking in Persons Act, 2013**.[4] The Act is a comprehensive piece of legislation dealing with trafficking in persons. It replaces the old fragmented manner of dealing with this matter, under various pieces of legislation.[5] In addition to creating very specific offences criminalising trafficking in persons, the Act also affords victims the right to claim compensation from convicted traffickers for damages, physical injuries and psychological harm suffered.

14. The **Protection of Personal Information Act, 2013**[6] deals with the privacy of personal information. It regulates data protection and privacy in South Africa and imposes a number of stringent obligations on all persons who deal with personal information. It protects the right to personal privacy but also provides for factors to be considered in striking a balance between such a right and the right to freedom of expression. When drafting the legislation, special consideration was given to ensuring that the Bill does not unduly restrict journalistic freedom, literary or artistic expression and law enforcement. The Act establishes an independent **Information Regulator** to regulate the implementation of the law. The Information Regulator was appointed and became operational on 1 December 2016.

15. The Government has introduced various policy measures and Parliament has given legislative effect thereto by passing no less than 27 relevant pieces of legislation during the period under review, which contribute to the promotion and protection of human rights.[7]

16. Section 26 of the Constitution provides that everyone has the right to have access to adequate **housing** and that the State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right. Towards the fulfilment of this right, as at March 2016, the Government continues to provide housing to the poor, targeting the most vulnerable among them, notably the elderly, women, child-headed households and persons with disabilities. The Government policy has since shifted from the mere provision of housing to the poor to the development of integrated and sustainable human settlements. In pursuance of this policy shift, the Government currently builds houses that are integrated with basic services infrastructure, schools, health facilities, and spaces for recreation, police stations and other amenities to enable the fulfilment of

human rights. To this end, the Government has established the Integrated Human Settlement Grant, which provided 153,000 housing units by March 2016. Further, the Government has also established the Urban Settlements Development Grant (USDG) to be used to improve efficiencies and coordination of this effort by producing serviced land for poor households, funding bulk infrastructure and implementing projects to upgrade informal settlements.

17. As part of realising the right to an adequate standard of living and housing, the Government has prioritised access to water and sanitation. Accordingly, the proportion of households whose main source of water for drinking is piped water inside the yard has almost doubled from 16.6% in 1996 to 30% in 2016. There is a slight decline of 0.2% from 2011 to 2016 of households whose main source of water for drinking is piped water inside the dwellings. Just less than three-quarters of households use piped water inside the dwellings/yards as their main source of water. As at December 2016, 60.6% of households have access to flush toilets connected to sewerage system as compared to 57% in 2011. Similarly, there is an increase in the proportion of households using pit toilets with ventilation and the decline among those using pit toilets without ventilation. Also, there is a decline in the number of households with no toilets. This trend is seen across all periods since 2001. There is an upward trend in the number of households using chemical toilets, which increased from 1.9% in 1996 to 4.2% in 2016.

18. Since 1994, the national Department of Human Settlements has spent US$ 10 billion (at 2010 prices) on **housing and human settlement development**, while over US$ 1.2 billion has been spent by other Government agencies on infrastructure projects for the redevelopment of human settlements. The capital investment by the State has created 1.29 million direct, indirect and induced person-year jobs, and the operational investment has created a further 10,800 jobs. The growth of the average price of houses in the market, including for the affordable or gap market, has increased five-fold over the past 20 years. More than 10,739 communities in 968 towns and cities across the country benefitted from the Government Housing Programme.

19. The **Spatial Planning and Land Use Management Act, 2013**[3] was specifically passed to redress the spatial legacy of apartheid. The Act is being implemented by municipalities to redesign the spatial patters to promote integrated communities across racial and class divisions. The courts have also protected the rights of people facing evictions by insisting on both procedural and substantive fairness in those cases where the eviction orders were being sought.

20. **The Community Survey of 2016 (CS: 2016)** was the second largest survey undertaken by Statistics South Africa (StatsSA), following the one which was conducted in 2007. CS: 2016 shows that there has been considerable improvement in access to housing:

Province	Census 1996		Census 2001		Census 2011		CS 2016	
	Households	(%)	Households	(%)	Households	(%)	Households	(%)
Western Cape	983 015	10,9	1 173 304	10,5	1 634 000	11,3	1 933 876	11,4
Eastern Cape	1 303 287	14,4	1 481 640	13,2	1 687 385	11,7	1 773 395	10,5
Northern Cape	218 339	2,4	245 086	2,2	301 405	2,1	353 709	2,1
Free State	625 011	6,9	733 302	6,5	823 316	5,7	946 639	5,6
KwaZulu-Natal	1 689 995	18,7	2 117 274	18,9	2 539 429	17,6	2 875 843	17,0
North West	591 240	6,5	760 588	6,8	1 062 015	7,3	1 248 766	7,4
Gauteng	2 069 512	22,8	2 791 270	24,9	3 909 022	27 1	4 951 137	29,3
Mpumalanga	669 801	7,4	785 424	7,0	1 075 488	7,4	1 238 861	7,3
Limpopo	909 371	10,0	1 117 818	10,0	1 418 102	9,8	1 601 083	9,5
South Africa	9 059 571	100,0	11 205 705	100,0	14 450 161	100,0	16 923 309	100,0

Source: Statistics South Africa, Census 1996; Census 2001; Census 2011; CS 2016
Note: *Number of households for censuses based on population in conventional housing units.*

21. The major overhaul of the education sector, which took place between 1994 and 2016, has advanced transformation of the sector. The Government commitment to the sector is demonstrated, not only by the numerous pro-equity and pro-poor educational and other policies, but also by the substantial amount of resources made available to transform and maintain it. One of the primary outcomes of these interventions has been the significant increase in access to education. The proportion of youths completing primary, secondary and tertiary education have all been steadily increasing over time. The primary process to evaluate the success of these policies is by examining education data, specifically in regard to school attendance and educational attainment trends. The table below shows the number of persons aged 5 years and older who attend educational institutions.

		Male	Female	Total
Census 1996	Attending	6 287 031	6 554 440	12 841 471
	Not Attending	9 931 337	11 383 638	21 314 975
	Total	16 218 368	17 938 079	34 156 447
Census 2001	Attending	7 228 100	7 286 653	14 514 754
	Not Attending	11 982 209	13 872 999	25 855 209
	Total	19 210 310	21 159 653	40 369 962
Census 2011	Attending	7 678 772	7 675 732	15 354 504
	Not Attending	13 202 450	14 604 735	27 807 185
	Total	20 881 221	22 280 467	43 161 688
CS 2016	Attending	8 589 596	8 684 415	17 274 011
	Not Attending	15 598 977	16 723 903	32 322 881
	Total	24 188 574	25 408 318	49 596 892

22. Across population groups, there has been an increase in persons attending an educational institution from 1996 to 2016. The number of black Africans attending an educational institution increased from 10.5 million in 1996 to 14.8 million in 2016. The Indian/Asian population had the lowest increase from 300,775 in 1996 to 323,986 in 2016. The number of white persons attending an education institution decreased from 980,474 in 2011 to 965,374 in 2016. There is a considerable decrease by 1.4 million of the number of people with no schooling between 1996 and 2016. The number of persons who attained primary and secondary education has also increased over time (from 8.3 million in 1996 to 12.4 million in 2016). The number of people who attained at least a Bachelor's degree has significantly increased by 824,564 thousand between 1996 and 2016. While inequalities across population groups remain, outcomes have improved amongst historically disadvantaged groups. For example, the number of black African university students graduating annually has increased from about 23,000 in 1996 to about 63,000 in 2012.

23. Significant progress has also been made in improving access to education for children with disabilities through the implementation of the Policy on Inclusive Education as embodied in the Education White Paper 6 (2001) and the Policy on Screening, Identification, Assessment and Support (2014). The number of learners with disabilities enrolled in special schools has increased from 108,240 in 2011 to 119,972 in 2015. The number of children with disabilities enrolled in ordinary public schools has also increased from 80,000 in 2011 to 111,430 in 2014. To ensure access to quality education and support for children with severe to profound intellectual disability, the Department of Basic Education (DBE) has collaborated with the Departments of Health, Social Development, Transport, Public Works and Cooperative Governance to develop a Draft Policy which was published for public comment in 2016. The National Treasury has allocated a Grant in the amount of R477 million to ensure access to services for this vulnerable group for the period 2017 to 2019.

24. In 1994, the Government introduced the National School Nutrition Programme (NSNP) which aims to address hunger and to contribute to learning in schools by providing learners with quality nutritious meals. The NSNP is wholly funded by the State through a dedicated budget. Following the 2006 survey recommendations by the Fiscal and Finance Committee, the programme has been expanded to cover both primary and secondary schools. **Figure 1** below depicts the overall performance of the programme over a period of four (4) years; i.e. 2012/13 and 2015/16 financial years and it reaches 9.5 million learners.

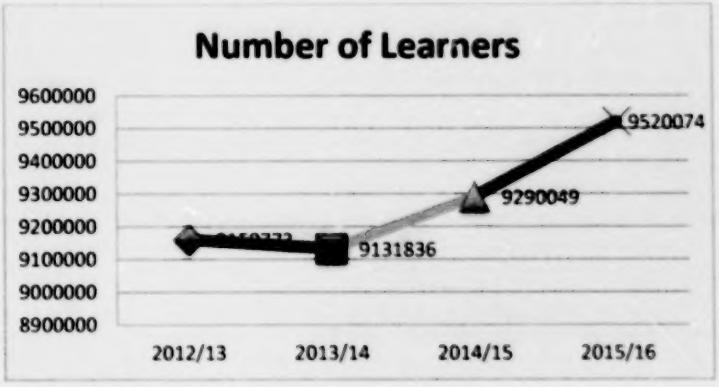


Figure 1: Number of learners reached

25. The programme's budget has increased by 16% from R 4,906 billion in 2012/13 to R 5,703 billion in the 2015/16 financial year, allowing for the provision of a cooked nutritionally balanced lunch. As one of its core elements, the implementation of the programme is predicated on the principle of community participation, which also includes the involvement of School Governing Bodies to assist in the management of the programme. Currently, the programme contracts the services of 4,395 small and medium-sized enterprises to procure and deliver food to schools, thus promoting local economic development. In addition, a total of 52,585 women volunteers receive a stipend in acknowledgment of their services in the preparation and serving of the meals.

26. Overall, the education budget has increased to more than 5% of the GDP, making it a pro-poor education budget. Public education is funded by government and is supplemented through school fees and/or school fundraising, with the proviso that the South African Schools Act, 1996 allows for learners from poor families to be **exempted from paying school fees**. In 2015, 77% of learners in public schools attended no-fee

paying primary schools, while 76.7% of students in public high schools (Grade 8 to Grade 12) attended no-fee paying schools.

27. The Government is committed to eradicating mud schools and providing water, sanitation and electricity through the Accelerated School Infrastructure Delivery Initiative (ASIDI) programme and the Provincial School Build Programme. Good progress has been achieved in providing basic services (water, sanitation and power supply), new schools and the maintenance of existing ones. The Provincial Schools Build Programme (PSBP) targets the provision of basic services, new schools, additions to existing schools, new and upgrading of services and maintenance, while ASIDI is a programme driven by the DBE to address schools infrastructure backlog in all schools that do not meet the basic safety norms and standards. The purpose of the programme is for the eradication of schools made entirely of inappropriate structures and the provision of basic level of water, sanitation and electricity to schools. Through ASIDI, 173 inappropriate structures have been eradicated, 615 schools have been provided with water, 425 with sanitation and 307 with electricity. The two programmes are jointly responsible for improved infrastructure which has resulted in a higher proportion of younger children accessing schoolroom facilities.

28. Section 27(1) of the Constitution guarantees everyone, including persons with disabilities, the right to have access to **social security** and, if they are unable to support themselves and their dependants, appropriate social assistance. The State is duty-bound to take reasonable measures, within its available resources, to achieve the progressive realisation of this right. The Social Assistance Act, 2004 as amended[9] makes provision for different types of social grants and social relief of distress, and the management and delivery of these social benefits through the South African Social Security Agency (SASSA).

29. The South African Social Security Agency Act (SASSA), 2004[10] provides for the effective management, administration and payment of social assistance and service through the establishment of the SASSA. SASSA also establishes a Social Security Inspectorate with a mandate to protect the rights of the beneficiaries. The table below provides a snapshot of the number and types of grants per region per month (in this case April 2016):

Region	*Older persons*	*WR veteran*	*Disability*	*Grant in aid*	*Care dep G*	*Foster child*	*Child support*	*Total*	*% of total*
EC	535,979	39	180,547	18,830	19,591	111,578	1,865,585	**2,732,149**	16.1%
FS	188,011	2	73,445	2,848	6,732	36,752	666,354	**974,144**	5.7%
GP	516,268	66	111,597	4,466	16,858	53,374	1,724,569	**2,427,198**	14.3%
KZN	648,954	30	250,941	47,531	36,944	109,087	2,803,749	**3,897,236**	23.0%
LP	440,995	12	95,393	29,197	13,792	53,978	1,746,972	**2,380,339**	14.0%
MP	234,876	13	77,805	7,312	9,919	34,826	1,052,416	**1,417,167**	8.4%
NC	81,434	8	49,557	7,392	5,013	14,288	297,140	**454,832**	2.7%
NW	240,262	6	81,431	8,234	9,086	36,780	814,783	**1,190,582**	7.0%
WC	309,479	64	150,946	14,113	12,637	30,554	962,497	**1,480,290**	8.7%
Total	**3,196,258**	**240**	**1,071,662**	**139,923**	**130,572**	**481,217**	**11,934,065**	**16,953,937**	
% of total	18.9%	0.0%	6.3%	0.8%	0.8%	2.8%	70.4%		

30. A recent study found that the Child Support Grant promotes early childhood development, reduces stunting, improves school retention and outcomes, increases access to health care, lowers the risk of child labour and contributes to lowering risky adolescent behaviour by the most vulnerable children.[11]

31. South Africa is well aware of the vulnerabilities associated with old age. In 2016, the Government released a discussion document on a proposal to introduce a mandatory system of retirement provision, which will also include death and disability benefits. In terms of the proposal, all working persons would contribute during their salary earning years so that they could receive a monthly income in the event that they are unable to work due to disability or old age, or their dependants in the event of death. The proposal has been tabled at the National Economic Development and Labour Council (NEDLAC) for discussion with all stakeholders, inclusive of Government, business, organised and community sectors.

32. The Minister for Social Development is required to keep a national register of persons convicted of the abuse of an older person. The register is used to reduce the risk of re-offending and prevents all registered convicted persons from working in environments that bring them into contact with older persons. The Social Security Agency Act requires any person who suspects that an older person has been abused or suffers from an abuse-related injury to immediately notify the relevant Government authority or a police official of his or her suspicion. Abuse of an older person is defined to include "physical, sexual, psychological, and economic abuse".

33. The Constitution provides that everyone has the right to **fair labour practices**. Every worker has the right to form, join and participate in a trade union and to strike. Likewise, employers have the right to form and join employers' organisations, to take part in their activities and to lock-out employees on strike. The Employment Equity Act, 1998[12] (EEA) provides for the Employment Equity Commission that advises the Minister of Labour on matters of transformation of the labour market. The Basic Conditions of Employment Act was amended in 2013 to further improve conditions of employees.[13] The Labour Relations Act, 1995[14] was also amended in 2014 so as to facilitate the granting of organisational rights to trade unions that are sufficiently representative, to strengthen the status of picketing rules and agreements, to provide greater protection for workers placed in temporary employment and to regulate the employment of fixed term contracts and part-time employees earning below an earnings threshold.[15]

34. The Employment Equity Amendment Act, 2013 and the Employment Equity Regulations, 2014 provide that it will be unfair for an employer, based on a prohibited ground, or analogous arbitrary ground, to have different terms and conditions of employment for employees doing the same work, similar work or work of equal value. This applies to both gender and race. During the period under review South Africa also amended the Code to the Employment Equity Act on HIV and AIDs at the workplace.[16]

35. The right to have access to **food and water** is enshrined in section 27 of the Constitution. South Africa, as a developmental State bears the mandate to ensure that all citizens have access to basic services such as housing, water and sanitation. In 1994, the democratic Government inherited high levels of inequality and poverty, which left a large proportion of the population without access to basic services and resources. The Constitution places the responsibility on the Government to provide the entire population with basic services, within available resources. With regards to the right to water and sanitation, it must be noted that under South Africa's former water law, the right to use public water was tied to the ownership of land along watercourses. A new system of water allocation has been phased in so as to provide equitable access to water, to meet the basic human needs of present and future generations, and to redress the results of past racial and gender discrimination. Access to safe drinking water is a fundamental right that also links to the health, well-being and safety of the population of the country. The quality and availability of the water services are of extreme importance for the quality of human life and living standards. Improvements in access to piped water over the past decade is as follows:

Access to piped water	Census 1996	Census 2001	Census 2011	CS 2016
Inside the dwelling	3 976 855	3 617 603	6 684 621	7 511 853
Inside the yard	1 491 228	3 253 861	3 918 480	5 081 255
Access point outside the yard	1 765 945	2 594 904	2 581 146	2 625 645
No access to piped water	1 773 520	1 739 337	1 265 915	1 704 556
Total	9 007 548	11 205 705	14 450 162	16 925 325

36. In the past two years, one of the most pressing challenges for South Africa has been the severe drought. To mitigate the impact of water scarcity resulting from the drought, the Government established the Inter-Ministerial Task Team on Service Delivery to ensure that there continues to be reliable supply of water in all communities. The role of civil society organisations in supporting this effort cannot be overemphasised. To respond to the pressures brought about by water scarcity, the Government has reprioritised a budget allocation in the amount of R502 million. The Government has continued with the provision of water storage infrastructure and regional bulk infrastructure to assist municipalities with bringing the raw water from dams to bulk infrastructure systems to the reticulation connection that takes treated water to households. In the past year alone, the regional bulk infrastructure projects completed covered over 78,000 households, with over 570,000 people benefitting from it. A further 61,000 households were provided with interim or basic water supply in 27 priority district municipalities.

37. Health care, in South Africa, is a constitutionally guaranteed right. Section 27 of the Constitution provides that everyone has the right to access to health care services, including reproductive health care and the right to not be refused emergency medical care. To this end, the National Health Act, 2003 [Act No. 61 of 2003] (NHA) provides both a framework and a foundation for health care services in South Africa, taking into account, as it does constitutional, provincial and national health care imperatives.

38. The NDP provides a vision of a South African health system that is committed to ensuring "A long and healthy life for all South Africans" by the year 2030. By 2030, the NDP aims to have raised the life expectance of South Africans to at least 70 years; having produced a generation of under-20s that is largely HIV-free; reduced the burden of disease; achieved an infant mortality rate of less than 20 deaths per thousand live births, including an under-5 mortality rate of less than 30 per thousand; achieved a significant shift in equity, efficiency and quality of health service provision; achieved universal coverage; and, significantly reduced the social determinants of disease and adverse ecological factors.

39. Significant progress can already be seen in various areas of health care such as the extension of life expectancy rates – the latest Rapid Mortality Surveillance report published in December 2016, suggests that the Life Expectancy in South Africa increased to 63.3 years, from 57.1 in 2009. The mortality rates have also improved.

Impact indicators	*Baseline 2009*	*Current Status 2015 (published MRC Dec 2016)*	*MTSF 2019 targets*	*NDP2030 targets*
Life expectancy at birth: Total	56.5 years	63.3 years	65 years	70 years
Under-5 Mortality Rate (U5MR)	56 per 1,000 live-births	39 under 5 deaths per 1,000 live-births	33 under 5 year deaths per 1,000 live-births	30 under 5 deaths per 1,000 live-births
Neonatal Mortality	–	14 neonatal deaths per 1,000 live-	8 neonate deaths per 1,000 live-	

Impact indicators	*Baseline 2009*	*Current Status 2015 (published MPC Dec 2016)*	*MTSF 2019 targets*	*NDP2030 targets*
Rate		births	births	
Infant Mortality Rate (IMR)	39 per 1,000 live-births	28 infant deaths per 1,000 live-births	23 infant deaths per 1,000 live-births (15% decrease)	20 infant deaths per 1,000 live-births
Maternal Mortality Ratio	304 per 100,000 live-births	154 per 100,000 live-births	<100 maternal deaths per 100,000 live-births	

40. The above Life Expectancy trends corroborate the mid-year population estimates published by StatsSA during August 2016, which indicate that the Life Expectancy in South Africa increased from 56.4 in 2009 to 62.4.

41. South Africa has a quadruple burden of disease which includes communicable diseases such as HIV and AIDS and TB, high maternal mortality ratio and child mortality rate, increase in non-communicable diseases and high rates of violence, injuries and trauma. Strengthening the effectiveness of the health system is the foundation on which successful interventions to improve health outcomes are being built. Decreasing the burden of disease is dependent on a well-functioning health system that is based on the principles of accessible, equitable, efficient, affordable, appropriate and quality health service provision.

42. South Africa aims to achieve Universal Health Coverage by 2030 through the National Health Insurance (NHI) policy. The NHI policy of South Africa aims to "pool funds to provide universal access to quality affordable personal health services for all South Africans based on their health needs irrespective of their socio-economic status."

43. Currently, the South African health care system is challenged with many inequities carried from the past undemocratic Government. The NHI White paper published on 10 December 2015, stipulates that South Africa spends 8.5% of its GDP on health, yet the benefit incidence of health care in South Africa is very pro-rich, with the richest receiving 36% of total benefits, despite having a 'health need share' of less than 10%.

44. The Government, through its Department of Health (DoH), has set up 6 NHI work streams with the following objectives: to prepare for the establishment of the NHI Fund; to design and to implement NHI health care service benefits; to prepare for the purchaser-provider split and to accredit providers; to determine the role of medical schemes in an NHI environment; to complete the NHI Policy Paper for public release, and; to strengthen the District Health System. During the Medium Term Expenditure Framework (MTEF) commencing on the 2017/18 financial year, efforts will focus on establishing the NHI Fund. The NHI Fund, with support from the Office of Health Standards Compliance (OHSC), will initiate the process of accrediting Ideal Clinics, private Primary Health Care (PHC) Providers and public hospitals once they have been certified.

45. The Government has made significant progress towards strengthening the PHC system for South Africa by re-engineering the PHC's implementation through four identified implementation streams: the District Clinical Specialist Support Teams; the ward-based PHC Outreach Teams; the School-based Health programme; and the contracting of general practitioners and other providers to work in primary health care facilities.

46. Further progress can also be seen by the implementation of the Ideal Clinic Realisation and Maintenance (ICRM) Programme that is aimed at improving the quality of

health services, and at enhancing service delivery. In 2014, the Operation Phakisa 2: Scaling up Ideal Clinic Realisation and Maintenance Programme was launched to fast-track the implementation of Government priority programmes. Through Operation Phakisa 2, the public health sector seeks to improve the quality of care provided in 3,500 primary healthcare (PHC) facilities, which is comprised of Government clinics and Community Health Centres (CHCs). This work entails transforming the existing clinics and CHCs into ideal clinics, which all South Africans can use, out of choice, as a result of the enhanced quality of services they will provide. As at the end of March 2016, there was a cumulative total of 312 facilities qualifying as Ideal Clinics: Silver, Gold and Platinum levels.

47. To deal with the challenges of HIV and the wide-ranging impacts of AIDS, the Government has adopted a multi-sectoral approach. During 2011, the South African National AIDS Council, in which Government, business, labour and civil society are represented, reviewed the implementation of these strategic plans and developed a comprehensive prevention, care and treatment programme for the next five-year plan (for the period 2012–2016).

48. South Africa has the largest ARV therapy programme in the world, today. At the end of March 2016, there were 3 407 336 clients remaining on antiretroviral therapy (ART) (total clients remaining on ART – TROA). Prevention is the mainstay of efforts to combat HIV and AIDS. Since the HIV Counselling and Testing (HCT) campaign was introduced in 2010, over 44 million people have been tested. A total of 11,898,308 people between the ages of 15 and 49 years were tested, exceeding the annual target of 10 million for the financial year 2015/16.

49. South Africa is one of the first in the world to rollout the new TB diagnostic technology (GeneXpert). Currently, South Africa conducts roughly 50% of the total volume of such tests performed globally to diagnose TB. In addition, 60% of patients globally on bedaquiline (newest medicine to treat drug resistant TB) are in South Africa. 63% of HIV positive people on treatment, globally, to prevent them from acquiring TB (isoniazid prevention therapy – IPT) are also in South Africa. In 2014, Government launched a massive TB screening programme targeting correctional facilities, mines and six peri-mining communities. In 2015, 569,475 inmates in correctional centres were screened during admission, incarceration and upon release; and 97.3% of the 221 controlled mines are providing TB screening to their employees. In addition, 30 million people were screened for TB in public health facilities in 2015.

50. To improve access to early antenatal services and to empower pregnant women, the DoH launched the MomConnect programme in August 2014 through which pregnant women are registered via their mobile/cellular phones to receive weekly messages that are appropriate to their stage of pregnancy. Pregnant women can also send (unsolicited) complaints and compliments about services received at public clinics. As at 31 March 2016, a cumulative total of 917,053 pregnant women were registered and the DoH received 753 complaints and 4,746 compliments.

51. In 2015/16, the DoH commenced the Demographic and Health Survey in order to track progress in the health status of the people of South Africa against the NDP goals. This is a critical survey that will provide essential data to inform policy and management of strategic programmes. It covers demographic indicators, maternal, new-born and child health programme indicators, reproductive health and contraception, management of non-communicable diseases and risk factors, as well as women's status in the society and will greatly assist the Government with its commitment to realise the vision of a "A long and healthy life for all South Africans".

52. South Africa has become a major transit point and destination for mixed-migration flows. **Foreign nationals** enjoy all rights enshrined in the Constitution, except for certain

civil political rights reserved for citizens only. South Africa continues to be a major destination for asylum-seekers and a variety of migrants in search of better social and economic opportunities.

53. Unaccompanied migrant children entering South Africa are kept in child and youth care centres and treated as children in need of care and protection. Often there are difficulties in tracing their families and repatriating them to their countries of origin. Consequently, such children remain in the country for a long time. South Africa has noted the concluding observations of the CRC Committee which recommends the strengthening of systematic and disaggregated data collection on migrant, asylum seeking and refugee children and expediting the development of a protocol to streamline the delivery of timely child protection services to migrant asylum seeking and refugee children.

54. In 2012, the Government convened a National Summit on Social Cohesion which reviewed progress made towards creating a caring and proud South African society and to provide a platform to discuss the National Strategy for Developing and Inclusive South African society. The summit recognised that social cohesion depends, in large measure, on the ability of communities, as part of society, to address this challenge and adopted a Programme of Action and a Declaration which acknowledged the challenges faced by South Africa in building a non-racial, non-sexist and united society after 1994.

55. Attacks on foreign nationals experienced in the past and, recently in 2015, resulted in the loss of life and damage to property. Government strongly condemned such attacks and the law enforcement agencies stepped in and stopped the attacks and the spread to other parts of the country. The restoration of peace, law and order in our communities is coordinated at the highest level of the Government. President Jacob Zuma convened meetings of stakeholders in South Africa to discuss the country's migration policy and how various sectors can work with the Government to promote orderly migration and good relations between citizens and foreign nationals. The issues related to violence and discrimination against foreign nationals are being addressed through three main Inter-Ministerial Committees (IMCs), namely the Inter-Ministerial Committee (IMC) on Migration, the IMC on Social Cohesion and the IMC on Population Policy.

56. In terms of paragraph 133 of the Durban Declaration and Programme of Action, the Government has developed human rights training for law enforcement officers. The purpose of this training is to ensure that enforcement of immigration legislation complies with the South African Government's international obligations and promotes a human rights culture as provided for in the Constitution and the Immigration Act.[17]

57. The Government is proposing a vision of South Africa as a country that embraces international migration for development. The **Green Paper on International Migration (2016)** contends that it is neither desirable nor possible to stop international migration. It concludes that international migration is a natural and largely positive phenomenon which, if well managed, can, does and will make a crucial contribution to growing South Africa's economy and transforming Africa as envisioned in Agenda 2063.

58. The Government has developed a draft **National Action Plan (NAP) to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance**, in collaboration with various role-players, including civil society. The draft will inform a plan which provides the basis for the development of a comprehensive public policy against racial discrimination, racial discrimination, xenophobia and related intolerance. The process relating to the development of a NAP for South Africa emanated from the Durban Declaration and Programme of Action (DDPA) adopted at the 3rd World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. The draft NAP was published for public comment from June to August 2016 and is currently being redrafted to be placed before Cabinet for consideration and approval later this year.

59. The Cabinet, in October 2016, approved the publication for public comment **of the Prevention and Combating of Hate Crimes and Hate Speech Bill**. The Bill creates the offences of hate crimes and hate speech, and also seeks to put in place measures to prevent and combat these offences. According to the Bill, a hate crime is committed if a person commits any recognised offence, that is a common law or statutory offence (referred to as the "base crime or offence") and the commission of that offence is motivated by unlawful bias, prejudice or intolerance. Following public consultation and comments, the Bill is currently being redrafted.

60. The **safety of women and children** in South African communities is paramount. Sexual violence against children remains a significant challenge and South Africa has noted the concluding observations of the CRC Committee regarding the low rates of reporting, prosecution and conviction; the overall lack of and regional disparity in the provision of support services to child victims, including emergency services, and the heavy reliance on civil society organizations for the delivery of such services.

61. The Government has established Thuthuzela Care Centres (TCC) in the quest to reduce secondary victimization. The UN Secretary General, in 2011, recognised these centres as a "world best practice model" in the field of gender violence management and response. Thuthuzela's integrated approach to sexual assault survivors is one of respect, comfort, restoring dignity and ensuring justice for victims of sexual violence.

62. The management of TCC-model and roll-out falls within the responsibility of the National Prosecuting Authority (NPA). Its success is based upon effective and efficient stakeholder cooperation within Government Departments, and in collaboration with designated civil society organisations. The model is specifically focused on being victim-friendly and court directed, with prosecutor-guided investigations into the crimes and stakeholder cooperation. The ultimate goal is to minimise secondary victimization, reduce the cycle period for the finalisation of cases and to increase conviction rates in these cases.

63. The South African Police Services (SAPS) has established the Family Violence, Child Protection and Sexual Offences Units in order to provide victim friendly services to victims of gender based violence. When reporting a crime, the victim is removed from an environment such as a police station, to a more victim-friendly environment before being transported by police or an ambulance to the TCC at the hospital.

64. The Government has trained Victim Empowerment service providers in all nine provinces of the country and also established Khuselela One Stop Centres which provide integrated victim empowerment services. The Government has also established shelters for abused women, white door centres (centres of hope) for victims of gender based violence in different provinces and a 24-hour Gender Based Violence Command Call Centre which has won a number of international awards. South Africa's 365 Days Campaign (which grew from the initial 16 Days of Activism for No Violence against Women and Children, held during November/December) has mobilised all sectors of society, aimed at mobilizing men and boys to become part of the solution in eradicating violence against women and children.

65. In 2014, the Government finalised a **National Strategy for Inter-sectoral Management of Sexual Offences** which encourages the inter-sectoral approach to all matters relating to sexual offences courts. It sets out clear duties and responsibilities of all stakeholders in the establishment and management of these courts. The National Strategic Plan also provides for the minimum uniformed personnel required at each sexual offence court.[18] All victims should have access to services such as court preparation programme; information materials in the form of text, visuals and Braille; allocation of food for children, vicarious trauma programmes for personnel working with victims of sexual

violence as well as a case-flow management system and screening policy to direct sexual offences cases to sexual offences courts where they are established.

66. The equality clause in the Constitution (section 9), expressly mentions marital status as one of listed grounds upon which unfair discrimination is prohibited. The Department of Social Development's (DSD) **White Paper on Families in South Africa** provides that along with the economy, polity and education, the family is universally viewed as one of the essential sectors without which no society can function. The family influences the way society is structured, organized, and functions.

67. The Government, working with relevant stakeholders, developed a strategy to address gender-based and sexual orientation-based violence against lesbian, gay, bisexual, transgender and intersex people in South Africa. A **National Task Team (NTT)** was re-established in 2011, with the Government together with representatives from Chapter 9 institutions and civil society organizations working in partnership to achieve a number of formidable tasks. These include, amongst others, the development of a National Intervention Strategy to respond to, and prevent, gender and sexual orientation-based violent crimes perpetrated against LGBTI persons and the development of an Inter-sectoral Implementation Plan which would link parallel and complementary initiatives. The NTT also undertook to strengthen the Government's ability to respond to LGBTI needs and to strengthen the capacity of civil society organizations to deliver related services. The Government sets out to improve linkages amongst Government Departments, to undertake programmes such as the Access to Justice and the Promotion of Constitutional Rights Programme and the National Action Plan (NAP), as well as working closely with relevant human rights institutions - such as the Human Rights Commission and the Commission for Gender Equality – to combat racism, xenophobia and related intolerance and in that manner address the impact of different forms of discrimination targeting LGBTI persons. It seeks to improve the management of cases by relevant role-players in the criminal justice system, including the SAPS, the NPA, the DSD, the DoJ and the Department of Correctional Services (DCS).

68. South Africa has taken significant steps to improve coordination between Government and civil society in combating violence (including rape and murder) against LGBTI persons.[19]

69. The Government is making strides to ensure that LGBTI persons are treated as equal citizens and ensure that any challenges to fulfil the rights of the LGBTI community are dealt with. The Government does not allow any discriminatory practices in respect of the marriage of same-sex couples, or any form of degrading and harmful treatment of transgender persons. The Government's commitment to protect the rights of LGBTI persons in South Africa was recently exemplified by action by the Minister of Home Affairs, who denied a visa application by a cleric well known for preaching homophobia from the pulpit. The Minister of Home Affairs has established a task team to deal with similar cases in the future.[20]

70. In order to ensure that indigent people receive competent and adequate legal representation in court, **Legal Aid South Africa**, an autonomous statutory body, renders or makes available legal representation to indigent persons at State expense.[21]

71. With regards to **overcrowding in prisons**, the Government implemented the Electronic Monitoring of Parolees system in February 2012 as part of transforming our parole and social reintegration systems. This system alleviates the challenges of parolees absconding from the system of community corrections while also reducing the risk of recidivism. In 2012, the Government launched the first Halfway House for parolees in Gauteng Province. This event introduced a whole new era in rendering social integration services to offenders.

72. Operation Funda[22] is one of the Government's projects, launched in 2011, to enhance offenders' access to education and training to equip them for effective and sustainable social re-integration. The purpose of the correctional system is not punishment, but protection of the public, promotion of social responsibility and enhancing human development to prevent repeat offending or the return to crime. The Government insists that people who leave correctional centres must have appropriate attitudes, and competencies for them to successfully integrate back into society as law-abiding and productive citizens. Therefore, the Government implements a range of rehabilitative interventions to offenders, together with the relevant educational interventions, with the aim to strengthen the rehabilitation as well as the whole integration process of the offender. From April 2013, it is compulsory for every inmate to complete Adult Basic Education and Training levels 1 to 4.

73. The **White Paper on Remand Detention** was signed into policy in March 2014. The White Paper seeks to develop a strategy to address the high levels of over-crowding in South African detention facilities for awaiting trial prisoners.

Jurisprudence

74. The judgments of South Africa's courts are continuously being factored into the policies of Government to ensure the strengthening of a human rights culture in the country.

75. The Constitution 17th Amendment Act, 2012 and the Superior Courts Act, 2013[23] are legislative measures designed to affirm the independence of the judiciary. These legislative measures acknowledge the Chief Justice as the head of the Judiciary, who exercises responsibility over the establishment and monitoring of the norms and standards for the exercise of judicial functions and the performance of all courts.

76. The independent Judiciary, as one of the three branches of the State, has been instrumental in upholding South Africa's constitutional values such as human dignity, equality and the supremacy of the Constitution. Whilst significant progress has been made in respect of the transformation of the judiciary, further measures need to be taken to, amongst others, ensure that more women are appointed to the Bench.

77. A significant number of cases involving various aspects of human rights have been handed down by our courts during the period under review. For example, the Constitutional Court, which is South Africa's apex court, handed down 35 judgments in 2012, 47 in 2013, 43 in 2014, 43 in 2015 and 17 in 2016. Numerous judgments are also handed down by the various High Courts, Magistrates' Courts, Equality Courts and specialised courts such as the Land Claims Court and the Labour Court.

78. The case of *Minister of Home Affairs* v *Tsebe*[24] provides a fitting example of how constitutional values impact and guide the various activities of the State. In this case, the Constitutional Court clarified some aspects of extradition, as well as some relating to deportation and sojourn in South Africa. The Court held that – "*If we as a society or the State hand somebody over to another State where he will face the real risk of the death penalty, we fail to protect, respect and promote the right to life, the right to human dignity and the right not to be subjected to cruel, inhuman or degrading treatment or punishment of that person, all of which are rights our Constitution confers on everyone.*"[25]

79. South African courts also pronounced on the realisation of various socio-economic rights. For example, during the period under review, important court decisions contributed to improve the realisation of the right to education. The judgment in *The Governing Body of Rivonia Primary School v The MEC of the Gauteng Department of Education*[26] highlights the continued racial disparities in our schooling system, where the court held that school governing bodies may not have an unqualified power to decide upon the admission policy

to public schools. In the case of *Head of Department, Department of Education, Free State Province v Welkom High School, Head of Department, Department of Education, Free State Province v Harmony High School*[77], the Court considered the rights of pregnant learners and policies which state that pregnant learners must be absent from school for a certain period of time.[78] The Court held that these policies violate pregnant learners' constitutional rights and therefore ordered that the policies be reviewed.

Human rights institutions

80. Several institutions have been established to support the realisation of human rights in South Africa. Chapter 9 of the Constitution creates various **State institutions supporting constitutional democracy**. These bodies include the South African Human Rights Commission (SAHRC) which is tasked with promoting respect for human rights and a culture of human rights, promoting the protection, development and attainment of human rights and monitoring and assessing the observance of human rights in the country. The SAHRC is an independent body and accountable only to Parliament. The SAHRC is enjoined to annually require relevant organs of State to provide it with information on the measures taken towards the realisation of rights concerning housing, health care, food, water, social security, education and the environment. Other bodies include the Commission on Gender Equality (CGE), the Public Protector and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.

Human rights infrastructure

81. The Government recognises civil society is an important stakeholder in its quest to deepen democracy in South Africa. Defined as operating outside of the State and independent of the market, civil society is often referred to as the third sector. Civil society organisations (CSOs) are varied in their character and in their purpose. However, there is a common thread that holds them together, which is that they exist in public life to promote public good. In fact, the strength of a country's civil society is often used as a measure to determine the strength of its democracy – this is also true of South Africa, which has dynamic and vibrant civil society organisations across various sectors.

82. The Government always aims to include civil society role-players as much as possible in processes to provide input on Government programmes, draft legislation and policy as well as in general consultation. There has also been meaningful engagement on this issue with various court cases affirming the obligation of Parliament to facilitate public participation in legislative processes at all levels.[79] Some examples of successful civil society involvement include the National Task Team on LGBTI Rights, the draft National Action Plan against Racism, Xenophobia and Related Intolerance, a Reference Group on the Traditional Courts Bill and various programmes to increase constitutional rights awareness and education.

International obligations

83. South Africa ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 12 January 2015. Ratifying the Covenant represents an important step forward, giving the ICESCR greater force in domestic law. South Africa's ratification of the Covenant will deepen the enforcement of socio-economic rights in the country. South Africa has duly submitted a number of other country reports in compliance with its reporting obligations.[80] South Africa is due to submit its country report on the ICESCR in April 2017.

84. In addition to the foregoing, South Africa has also made a number of key commitments at the sub-regional, continental and international levels on promoting human rights, including the promoting of women's empowerment and achieving gender equality.[11]

III. Promotion and protection of human rights

85. South Africa has strong constitutional protections for human rights, yet the real test lies in implementation. The challenge lies in ensuring that the guarantees and aspirations of the Constitution are not mere promises on paper, but become a daily reality in the lives of people. The delivery and protection of human rights takes place across the 3 Branches of the State, with all of them playing a pivotal role in giving meaning and content to these rights. The Executive, through various policies, programmes and administrative measures; the Legislature through laws and the Judiciary through its jurisprudence. Outside the 3 Branches of the State, civil society is the Government's most important partner in the quest for accessible justice in the country.

86. South Africa is committed to constitutional rights awareness and education. The Government's Socio Economic Justice for All (SEJA) programme is informed by the goals of the National Development Plan, being among others, to create a more informed citizenry in an environment where citizens are not afraid to take up their rights. SEJA seeks to promote the realisation of socio-economic rights, particularly for vulnerable and marginalised groups in South Africa. It aims to assist the Government in eradicating poverty, promoting sustainability and improving democratic and economic governance delivery on socio-economic rights in compliance with the Constitution.[12] The programme provides grant funding to civil society organisations to promote awareness and access to socio-economic rights amongst vulnerable and marginalised groups. Community advice officers (CAOs) are also important, as they often serve as a person's "first port of call" for assistance with matters of access to justice.

87. The Government runs a number of constitutional and human rights awareness campaigns focussing on constitutionalism and human rights within the context of nation-building and social cohesion. The Constitution has been translated into all of South Africa's 11 official languages and Braille, with copies printed and distributed. A booklet called *The Constitution Made Easy for Learners* has been distributed to learners throughout the country. Constitutionally mandated pieces of legislation[13] have been printed in booklet form in all official languages. The National School Moot Court Competition, a collaborative initiative of the Department of Justice and Constitutional Development (DoJ&CD), the DBE and civil society, has become extremely popular with learners and has generated so much interest that the DBE has decided to include this programme into its curriculum.

88. South Africa annually celebrates National Human Rights Day on 21 March. March month is declared "Human Rights Month in South Africa, where celebrations and public awareness campaigns are held throughout the country. The SAHRC also regularly publishes reports on general human rights issues, as well as annual reports on equality, socio-economic rights, and international human rights developments.

89. The Government continues to utilise a variety of platforms in an effort to consolidate, monitor and respond swiftly to public concerns. These include the Presidential Hotline, Public Liaison Offices, outreach activities and various access points across the country, including Thusong Service Centres. The use of *izimbizo* encapsulates an active reciprocal participatory programme through which South African citizens provide feedback to Government on policy delivery. The *imbizo*, in its traditional form, has constituted an important aspect of the African political system for many centuries. During the period under review, numerous *izimbizo* were held by various Government Departments.

Communication facilitated through unmediated platforms such as *Izimbizo* events strengthen partnerships between Government and communities. Principals are requested to commit to at least ten public engagements, including repeat and follow-up visits per year as part of the overall performance monitoring approach. Parliament also undertook various **"Taking Parliament to the People"** Programmes. This programme gives South Africans the opportunity to make their voices heard by participating in parliamentary processes.

90. Challenges that the Government is grappling with include:

- **The decriminalisation of sex work**: The selling and buying of sexual services and related activities, and how the legal system should respond, continue to be the subject of considerable public debate in South Africa. The core provision criminalising prostitution was challenged in *S v Jordan* – where the court found the law to be constitutional as it does not unfairly discriminate against women and does not infringe upon the right to privacy, freedom and security and the right to economic activity. Accordingly, the Government is not, at present, constitutionally obliged to change the existing law or to follow a particular model – it is a matter of policy choice as there is a range of legal responses possible to address prostitution in open and democratic societies. Within the current South African context, the debate on adult prostitution is complicated by a number of socio-economic and other factors. The South Africa Law Reform Commission (SALRC) was tasked to review the fragmented legislative framework regulating the selling and buying of sexual services, consider the need for law reform in relation to adult prostitution and to identify alternative policy and legislative responses.[34] Their proposals are currently before Cabinet.

- **The rights of mining-affected communities**: This is a complex issue with many human rights issues, also involving traditional leaders and communal land rights. There are various Government initiatives to, among others, strengthen the obligations of mining companies towards communities, their workers and the environment. The Government has established an Inter-Ministerial Committee (IMC) to deal with the revitalisation of distressed mining towns and communities across the country and allocated R18 billion to improve their socio-economic conditions through various projects, including those relating to the provision of housing and wellness programmes.[35]

- **Infant and maternal mortality**: South Africa has made significant progress regarding the improvement of maternal health and the reduction of maternal mortality in the last two decades. In 2010, it was estimated that nearly 3,000 women in South Africa died during child-birth, but the latest estimates show that maternal deaths have halved. The PMTCT programme, which aims to ensure that HIV-infected women remain healthy and give birth to healthy children, has been expanded rapidly; and many more women have benefited from this programme.[36]

- **Stateless persons**: Although the Government is still considering the ratification of the two Conventions on Statelessness,[37] it has: actively participated in the annual processes of the Executive Committee of the UNHCR (UNEXCOM), engaged its counterparts in the Southern African Development Community (SADC) region regarding the statelessness of several generations of people who originate from these countries, now living in South Africa without a citizenship status; convened a Birth Registration Indaba in December, 2015; and issued directives encouraging all South Africans to register timeously, including the early birth registration of all children born in South Africa. South Africa has enacted domestic legislation,[38] which is consistent with the spirit and letter of the Conventions aimed at reducing statelessness. Despite the challenges associated with efforts to resolve this

phenomenon. South Africa remains committed to addressing statelessness through various policy and legislative measures.

- **Early registration of birth**: Effective civil registration requires universal early registration of birth in order to safeguard the identity and status of each South African, and the accuracy of our National Population Register. Late Registration of Birth presents risks.[39] Since 2010, the Government has intensified its efforts to entrench Early Birth Registration (EBR) and to end late registration of birth. EBR also ensures that children are provided with access to health care, access to immunisation, and enrol in school at the right age. South Africa has made great strides in EBR in recent years.[40] South Africa notes the observations of the CRC Committee regarding administrative and practical obstacles in obtaining birth registration, including punitive measures for late birth registration and the CRC's recommendations regarding birth registration to ensure full conformity with the Convention. Renewed efforts will be made to address the concerns.

IV. Implementation of recommendations

91. The Government's commitment to the realisation of human rights for all within its borders is self-evident from the policies, legislative enactments and programmes it has initiated to meet its domestic and international obligations following its unconditional acceptance of the recommendations made to it at the 2nd Cycle UPR Report review in 2012. South Africa's steps taken to meet the accepted recommendations are outlined below within the approved guidelines and thematic framework set out in South Africa's response to the recommendations.[41] Most recommendations have been implemented, while others are in the process of being implemented through policy development initiatives and programmatic interventions **(see annexed Matrix)**.

92. Human Rights is a permanent standing item on the agenda of the Cluster Meetings of Directors-General[42]. The Ministerial Clusters exercise oversight over the work of the Clusters of Directors-General[43].

V. Key national priorities

93. The NDP drives the Government's agenda. In-line therewith, the Government pursues the realisation of 14 outcomes as set out in its MTSF: 2014-2019. The MTSF has two overarching strategic themes – radical economic transformation and improving service delivery. The Government's programme of radical economic transformation is focused on placing the economy on a qualitatively different path in order to ensure more rapid, sustainable growth, higher investment, increased employment, reduced inequality and de-racialisation of the economy.

94. South Africa has seen visible improvements in living standards. The Millennium Development Goals (MDG) Country Report: 2013, indicates that South Africa has made good progress in poverty alleviation. However, the Government remains acutely aware that the level of poverty among vulnerable groups such as women and children is higher than the poverty levels for the general population. A myriad of poverty alleviation programmes addressing income, human capital and asset poverty have resulted in more South Africans having access to some form of household income, even if only in the form of a social grant, as well as access to free basic services such as housing, piped water and sanitation. Overall, South Africans are enjoying a higher standard of living and the Government is fully committed to the implementation of Agenda 2030 for Sustainable Development.

Specific challenges

95. Addressing **unemployment** remains high on the Government's agenda. The Government has developed various programmes and initiatives to create decent jobs. Despite these policies and strategies, unemployment remains stubbornly high, compounded by the turmoil in the global economy. The Quarterly Labour Force Survey for Quarter 3: 2016 shows:

	Jul-Sep 2015	Apr-Jun 2016	Jul-Sep 2016	Qtr-to-qtr change	Year-on-year change	Qtr-to-qtr change	Year-on-year change
	Thousand					Per cent	
Population aged 15–64 yrs	**36 114**	**36 591**	**36 750**	**159**	**636**	**0.4**	**1.8**
Labour force	21 246	21 179	21 706	527	460	2.5	2.2
Employed	15 828	15 545	15 833	288	5	1.9	0.0
Formal sector (non-agricultural)	10 930	10 917	11 029	112	99	1.0	0.9
Informal sector (non-agricultural)	2 721	2 507	2 641	135	-80	5.4	-2.9
Agriculture	897	825	881	56	-16	6.8	-1.8
Private households	1 280	1 296	1 281	-15	1	-1.1	0.1
Unemployed	**5 418**	**5 634**	**5 873**	**239**	**455**	**4.2**	**8.4**
Not economically active	**14 867**	**15 412**	**15 044**	**-368**	**176**	**-2.4**	**1.2**
Discouraged work-seekers	2 226	2 526	2 291	-235	64	-9.3	2.9
Other (not economically active)	12 641	12 886	12 753	-133	112	-1.0	0.9
Rates (%)							
Unemployment rate	25.5	26.6	27.1	0.5	1.6		
Employment/population ratio (absorption rate)	43.8	42.5	43.1	0.6	-0.7		
Labour force participation rate	58.8	57.9	59.1	1.2	0.3		

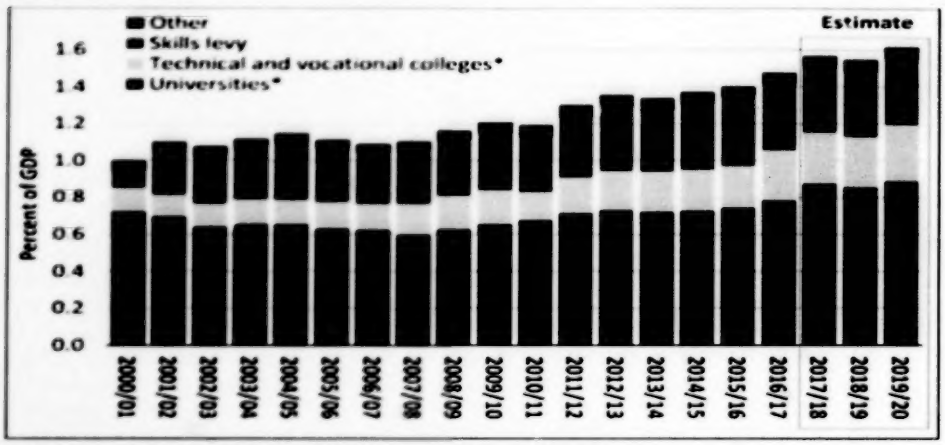
96. **Poverty and inequality** remain major challenges. Despite the removal of many apartheid laws from the statute books, their consequences continue to define the South African social and economic landscape. The latest Income and Expenditure Survey (IES) examines the increases to income according to population group. South Africa has seen the largest increases in 'non-white' household income. Indian/Asian-headed households showed a 36.8% increase, followed by black African-headed households at 34.5%. Households headed by coloureds saw a 27.7% increase in income while white-headed households saw only a 0.4% real increase. However, despite this significant growth in income among non-white households, there remains a tremendous gap between the population groups. White-headed households on average earn more than 5.5 times the income of the average black African-headed household. So, while the income growth trend shows very positive signs, historic inequality remains a serious barrier. Even though South Africans are getting richer, overall, there are still very high levels of inequality across and within population groups as the table below illustrates:

	IES 2010/11 (R)	IES 2005/06 (R)	Real Growth	Increase in Rand terms
South Africa	119 542	102 401	16.7%	17 141
Sex of household head				
Male	151 186	127 914	18.2%	23 272
Female	70 830	62 397	13.5%	8 433
Population group of household head				
Black African	69 632	51 773	34.5%	17 859
Coloured	139 190	109 038	27.7%	30 152
Indian/Asian	252 724	184 711	36.8%	68 013
White	387 011	385 599	0.4%	1 412

97. **#FeesMustFall**, is a student campaign which began in October 2015 in South Africa. Under this campaign, students are calling for free higher education in South Africa. The Government has established the Judicial Commission of Inquiry into Higher Education

and Training to investigate the feasibility thereof and is expected to complete its work before end of 2017.

98. Two key concerns lie at the heart of the matter. First, despite massive increases in allocations to the National Student Financial Aid Scheme (NSFAS), the enrolment of academically deserving students from poor communities has grown faster than available funding. Second, there is no clear national framework for financing students who, although not affluent, are above the modest threshold established by the NSFAS means test. As a result, many students face financial hardships that undermine their ability to succeed academically. The Government has significantly expanded funding of education over the past 20 years. Basic education is the largest item in the national budget. The Government's current policy framework calls for the progressive expansion of post-school education within available resources. Despite fiscal constraints, subsidies to universities grow at approximately 10.9 % each year and transfers to NSFAS grow at approximately 18.5% as illustrated below:



* *Includes direct subsidies and allocations through NSFAS*

VI. Technical assistance

99. Technical assistance plays a big role in the attainment of human rights and fundamental freedoms in South Africa. South Africa has bilateral agreements with various countries which provide aid towards the development of the country. Foreign aid is used to augment existing budgetary resources in order to ensure the realisation of all human rights guaranteed in the country's constitution, especially the fulfilment of socio-economic rights. The Government of South Africa welcomes the continued valuable technical assistance and capacity building provided by the international community.

Conclusion

100. South Africa's commitment to the attainment of all human rights and fundamental freedoms for all remains unwavering. As South Africa recently celebrated the 20th Anniversary of the 1996 Constitution, we realise once again that the struggle was not only for political freedom but the attainment of a better life for all. The UPR assists South Africa in assessing its fulfilment of its commitment to providing better lives for all its people.

Notes

[1] Many rights are subject to **immediate** implementation such as the obligation to refrain from torture, discrimination on prohibited grounds, to guarantee freedom of religion and expression etc. Not all socio-economic rights are subject to "**progressive realisation**". Some socio-economic rights such as the right to "basic education" (s 29(1)(a) of the Constitution) or "primary education" in article 13(2)(a) of the International Covenant on Economic, Social and Cultural Rights are subject to immediate realisation (or failing which to a plan of action in terms of article 14).

[2] Act No. 4 of 2000.

[3] Act No. 13 of 2013.

[4] Act No. 7 of 2013.

[5] For instance, the Sexual Offences and Related Matters Amendment Act, 2007 (Act No. 32 of 2007) addresses the trafficking of persons for purposes of sexual exploitation, while the Children's Act, addresses the trafficking of children.

[6] Act No. 4 of 2013.

[7] Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2012 [Act No. 10 of 2012]; South Africa Police Service Amendment Act, 2012 [Act No. 12 of 2012]; Use of Official Languages Act, 2012 [Act No. 20 of 2012]; Repeal of the Black Administration Act and Amendment of Certain Laws Amendment Act, 2012 [Act No. 12 of 2013]; National Health Amendment Act, 2013 [Act No. 14 of 2013]; National Environmental Management Laws Amendment Act, 2013 [Act No. 15 of 2013]; Dangerous Weapons Act, 2013 [Act No. 16 of 2013]; Spatial Planning and Land Use Management Act, 2013 [Act No. 17 of 2013]; Commission on Gender Equality Amendment Act, 2013 [Act No. 20 of 2013]; Basic Conditions of Employment Amendment Act, 2013 [Act No. 20 of 2013]; Merchant Shipping (International Oil Pollution) Act, 2013 [Act No. 24 of 2013]; Employment Equity Amendment Act, 2013 [Act No. 47 of 2013]; Employment Services Act, 2014 [Act No. 4 of 2014]; Marine Living Resources Amendment Act, 2014 [Act No. 5 of 2014]; Labour Relations Amendment Act, 2014 [Act No. 6 of 2014]; Mental Health Care Amendment Act, 2014 [Act No. 12 of 2014]; Infrastructure Development Act, 2014 [Act No. 23 of 2014]; National Water Amendment Act, 2014 [Act No. 27 of 2014]; Legal Practice Act, 2014 [Act No. 28 of 2014]; Rental Housing Amendment Act, 2014 [Act No. 35 of 2014]; Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2015 [Act No. 5 of 2015]; Maintenance Amendment Act, 2015 [Act No. 9 of 2015]; Refugees Amendment Act, 2015 [Act No. 10 of 2015]; Immigration Amendment Act, 2016 [Act No. 8 of 2016]; Higher Education Amendment Act, 2016 [Act No. 9 of 2016]; Unemployment Insurance Amendment Act No. 6 of 2012 [Act No. 10 of 2016]; and Children's Amendment Act, 2016 [Act No. 17 of 2016].

[8] Act No. 16 of 2013.

[9] Act No. 13 of 2004.

[10] Act No. 9 of 2004.

[11] SA Report to the UN Committee on the Rights of the Child (2015) (para. 91).

[12] Act No. 55 of 1998.

[13] It contains an important amendment that prohibits anyone from requiring or permitting a child under the age of 15 years to work. It also makes it an offence for anyone to require or permit a child to perform any such work or to provide any service that places the child's well-being at risk. The Amendment Act further empowers the Minister of Labour to regulate a broader range of matters in sectoral determinations, changes the Minister's powers in relation to sectoral determinations and changes enforcement procedures, which are intended to simplify the Department of Labour's ability to take enforcement steps against non-compliant employers and to access the Labour Court for this purpose.

[14] Act No. 66 of 1995.

[15] It is important to note that the Labour Relations Act, 1995 is currently in the process of amendment in order to address the adversarial labour relations environment characterized by the labour unrest and unprotected strikes. South Africa is also currently in the process of establishing a national minimum wage in order to address not only the low levels of wages and income poverty but also to address persistent inequality.

[16] This was done in line with the ILO HIV and Aids Recommendation 2010.

[17] The Immigration Act, 2002 (Act No. 13 of 2002).

[18] The personnel include: (i) 1 presiding officer; (ii) 2 prosecutors; (iii) 1 intermediary; (iv) 1 designated clerk; (v) 1 designated social worker; (vi) 1 legal aid practitioner; and (vii) 1 court preparation / victim support officer.

[19] Human Rights Watch, World Report, 2017.

[20] The task team was, amongst others, tasked to address issues of strengthening legislation, processes, SOP, identifying areas of weaknesses which may prejudice the treatment of LGBTI, devising strategies for training on attitude and sensitivity, identifying and addressing challenges in dealing with issues of same sex marriages. Processes relating to gender change were also revised to ensure improved turnaround time, changes in gender status and newly assumed identity documents. A circular instructing every DHA official around dealings with LGBTI persons was also issued through internal communication. On a regular basis, the Minister holds meetings and media briefings to sensitise people about a myriad of issues (including LGBTI), the human rights issues of LGBTI persons. The DHA is working around the clock to ensure the changing sex of transgender people are reflected in their ID documents, the registration of adoptions by same-sex couples; and the treatment of asylum seekers on the basis of sexual orientation. The DHA compiled and distributed a list of Home Affairs branches that offer same-sex marriage services, to avoid unnecessary inconvenience. The list was published on the departmental website. The Minister had set up a task team, consisting of departmental officials and LGBTI groups, to review legislation, clarify those areas in law that are not clear, and to standardise operations at Home Affairs. Such meetings are chaired by a DDG who reports progress to DG and Minister. Recommendations on the way forward and a timeline to resolve issues shall be tabled to the Minister in the not too distant future.

[21] Legal Aid South Africa has done sterling work in advancing access to justice for indigent persons in need of legal representation, though there are still challenges in the sense that demand outweighs supply and Legal Aid South Africa is unable to assist all the persons currently in need of their services.

[22] Operation Funda means Operation learn.

[23] Act No. 10 of 2013.

[24] 2012 (5) SA 476 (CC).

[25] Paras. 67, 68.

[26] 2012 (5) BCLR 537 (GSJ).

[27] 2013 (9) BCLR 989 (CC).

[28] In this case, a 16-year old fell pregnant. In accordance with the school's pregnancy policy, the learner would not be allowed to write her year-end examinations and would then have to repeat grade 11.

[29] See, for example, *Land Access Movement of South Africa v the Chairperson of the NCOP* 2016 (5) SA 635 (CC).

[30] The International Convention on Civil and Political Rights (ICCPR) report was completed and submitted to the UN. In March 2016 the UN Committee on Human Rights reviewed the country report and dialogued with a high level South African delegation on the report. The 4th – 8th periodic reports on the International Convention on the Elimination of Racial Discrimination (ICERD) was submitted to the UN in 2012. The review of the reports by the CERD was held in August 2016. The next 9th-11th periodic reports are due in January 2020. The report on the African Charter on Human and Peoples Rights (ACHPR) was submitted to the AU in February 2016 and reviewed by July 2016. The Report on the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) Report was submitted to the UN in 2015. The Initial Report on the African Charter on the Rights and Welfare of the Child was submitted in 2014 and reviewed in 2015 and a combined 2nd, 3rd and 4th Report on the UN Committee on the Rights of the Child was submitted to the UN in 2015 (together with an initial report on the Optional Protocol on the sale of children and child prostitution and child pornography) both of which were reviewed in 2016.

[31] South Africa's commitment to stamping out discrimination against women is further reflected in its accession to the Convention on the Elimination of all Forms of Discrimination against Women without reservations. South Africa also ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women without reservations. The Government has further committed itself through the SADC Protocol on Gender and Development and the Beijing Platform of Action to undertake activities to promote the human rights of women.

[32] SEJA has 6 focus areas, which include:

- Awareness of constitutional rights, with an emphasis on socio-economic rights and on vulnerable groups;
- Enhanced participatory democracy through public policy dialogues on constitutional rights;
- Sustained collaboration between Government, Chapter 9 institutions, civil society organisations and other stakeholders in justice service delivery and socio-economic rights (including support for community advice offices);
- Research on socio-economic rights and jurisprudence;
- Sector co-ordination and policy design on constitutional development, and
- Strengthened capacity, engagement and participation of civil society organisations in the realisation of constitutional rights.

[33] Such as the Promotion of Equality and Prevention of Unfair Discrimination Act, the Promotion of Administrative Justice Act and the Promotion of Access to Information Act.

[34] For the sake of clarity it should be noted that the SALRC's Project 107 does not use the terminology "sex work" as this pre-supposes the recognition of the sale of sexual services as work. A policy choice has not been made in this regard. Option 1: Repeal the Sexual Offences Act, 1957 and amend the Criminal Law (Sexual Offences and Related Matters) Act, 2007 to criminalise prostitution and all prostitution related offences. This option is coupled to diversion as currently provided for low level crime to facilitate exit i.e total criminalisation. Option 2: Repeal the Sexual Offences Act, 1957 and amend the Criminal Law (Sexual Offences and Related Matters) Act, 2007 to criminalise prostitution and all prostitution related offences with the exception of the person selling sexual services i.e. partial criminalisation.

[35] The bulk of this funding is from the Government, with mining companies contributing approximately a third of the funding. The mandate of the IMC is to oversee the implementation of integrated and sustainable human settlements, improve living and working conditions of mine workers and determine the development path of mining towns and the historic labour sending areas. The Government has undertaken a socio-economic diagnostic study of the 15 prioritised mining towns and 12 prioritised labour sending areas to better understand the extent of the challenges in each town and to determine the most appropriate actions to address these.

[36] Millennium Development Goal 5: Improve maternal health 2015/ Statistics South Africa.

[37] The 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

[38] The Citizenship Act of 1995 and the Immigration Act of 2002.

[39] The existence of LRB poses serious security risks for the country as it opens possibilities for fraudulent entries into the National Population Register.

[40] From registering 39% of all births within 30 days in 2010/11, we registered approximately 67% of all births within 30 days in 2015/16.

[41] Accessed on A_HTC_21_16Add.1_SouthAfrica_E_Annex.

[42] The Justice, Crime Prevention and Security Cluster, International Cooperation, Trade and Security Cluster and Social Protection, Community and Human Development Clusters.

[43] The Ministers of Justice and Correctional Services, International Relations and Cooperation and the Minister in the Presidency responsible for Performance, Monitoring and Evaluation play a political oversight role on compliance. An Inter-departmental Committee on Treaty Obligations (IDC), constituted by Government officials with technical knowledge on human rights, was established in 2013. The IDC is open-ended and chaired by the Departments of Justice and Constitutional Development and International Relations and Cooperation (DIRCO). The essence of the IDC is to deal with issues of compliance and to address the need for capacity. A Government training manual on treaty obligations has been developed and this will be complemented by other training programmes.